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First report on State responsibility

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Addendum

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I. The distinction between "crimes" and "delictual" responsibility (continued)

E. Possible approaches to international crimes of States

76. It is possible to envisage five distinct approaches to the question of State criminal responsibility, as posed by article 19 and related provisions.

(a) *The approach embodied in the present draft articles.* As has been noted, the draft articles take a "delicts plus" approach.[101] The text, and in particular part two, sets out a range of consequences which flow from all breaches of international obligations and then modifies those consequences in certain respects to cope with cases of international crimes;

(b) *Replacement by the concept of "exceptionally serious wrongful act".* A second possibility, adumbrated in the footnote to article 40,[102] is to replace the term "crime" by some other term such as "exceptionally serious wrongful act", while going on in part two to distinguish the regime applicable to such acts from that applicable to "ordinary" wrongs;

(c) *A full-scale regime of State criminal responsibility to be elaborated in the draft articles.* A third possibility, which was apparently envisaged when article 19 was adopted, would involve a full-scale regime of State criminal responsibility for such crimes as aggression, genocide, apartheid and other international crimes of State;

(d) *Rejection of the concept of State criminal responsibility.* At the other end of the spectrum is the view that international law neither recognizes nor should recognize any separate category of State criminal responsibility, and that there is accordingly no place for the notion of international crimes in the draft articles;

(e) *Exclusion of the notion from the draft articles.* A further approach would exclude the notion of State criminal responsibility from the draft articles but for a rather different reason, viz., that the development of an adequate regime of criminal responsibility, even assuming that this is desirable in principle, is not a matter which it is necessary or appropriate to attempt at this stage and in this text.

77. Before turning to discuss these five alternatives, it should be noted that the disagreements in this field arise at different levels and concern distinct kinds of question.[103] For example, there is disagreement over whether international law presently recognizes State criminality; there is disagreement over whether it ought to do so. But there is also disagreement over whether any existing or possible regime of State criminality is aptly located within the general field of State responsibility. Most legal systems treat crimes as distinct from the general law of obligations, both procedurally and substantively. There is also a question as to what the consequences may be for the draft articles as a whole of any attempt to elaborate the notion of international crimes of State, which will likely apply to only a very small fraction of all unlawful State conduct. In short, there are differences over the existing law and over the appropriate policy; there are differences of classification; and there are pragmatic and empirical issues about the useful scope of the Commission's work. No doubt there are links between these issues, but they are distinct. It is possible to hold the view, for example, that although international law does not currently recognize the notion of State crime, it ought to do so; at the same time it is possible to hold the view that any regime for State criminality

[101] See above, para. 73.

[102] See above, para. 51.

[103] For the extensive literature on international crimes and their consequences, see the bibliography attached to the present report

needs to be as distinct from general State responsibility as criminal and civil responsibility are in most national legal systems.

1. Two preliminary issues

78. Before considering the various possible approaches, two preliminary issues should be mentioned: first, the relevance or otherwise of Chapter VII of the Charter of the United Nations; secondly, the relevance or otherwise of common conceptions of "crime" and "delict" deriving from other international and national legal experience.

79. When article 19 was first adopted, the Security Council was playing only a limited role under Chapter VII, and it was not envisaged that it could become a major vehicle for responding to international crimes of State. The commentary to article 19 merely noted that even in the form of a convention, the draft articles could neither qualify nor derogate from the provisions of the Charter relating to the maintenance of international peace and security.[104] The matter was given further consideration in the context of part two, both before and after the adoption of article 39.[105] Comments of Governments so far have supported the principle underlying article 39, while raising some questions concerning its formulation.[106]

80. The draft articles cannot modify or condition the provisions of the Charter or action duly taken under it. But such action can certainly be taken in response to an international crime, as defined in article 19, and not only in the case of aggression specifically envisaged by the Charter. At the very least, this contributes to the difficulty of dealing fully and effectively with international crimes in the draft articles. In an area where the relevant rules of international law are peremptory, the draft articles will be relegated to a secondary, residual role. This contrast suggests that any development of the notion of international crimes in the draft articles must be constrained to a great degree.

81. A second preliminary point relates to the issue of the so-called "domestic analogy". When adopting article 19, the Commission warned that the term "international crime" should not lead to confusion with the term as applied in other international instruments or in national legal systems.[107] But it is difficult to dismiss so readily the extensive international experience of crimes and their punishment. It is true that in proposing the category of State crimes the Commission was entering into a largely uncharted area. But the appeal of the notion of "international crime", especially in the case of the most serious wrongful acts such as genocide, cannot be dissociated from general human experience. The underlying notion of a grave offence against the community as such, warranting moral and legal condemnation and punishment, must in some sense and to some degree be common to international crimes of States and to other forms of crime.[108] If it is not, then the notion and the term "crime" should be avoided. Moreover, many of the same problems arise in considering how to respond to offences against the community of States as a whole, as arise in the context of general criminal law. It is no less unjust to visit on the community of the State the harsh consequences of condemnation and punishment for a serious crime without due process of law, than it would be to visit such consequences on an individual. Whatever transitional problems there may

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[104] *Supra*, note 57, commentary to article 19, para. (55).

[105] See *Yearbook ... 1992*, vol. II (Part One), paras. 260-266. In the result, despite misgivings expressed by members including the then Special Rapporteur, no change to article 39 was made.

[106] See A/CN.4/488, comments of Governments under articles 37, 38 and 39.

[107] See above, para. 74.

[108] For this purpose it makes no difference whether the "international community" is conceived as a community of States or in some wider and more inclusive sense; the crimes with which we are concerned are an affront to both.

be in establishing institutions of criminal justice at the international level, the international community surely cannot govern itself by any lesser standards than those it sets for individual States. Great caution is always required in drawing analogies from national to international law.[109] But equally if a concept and terminology is to be adopted which is associated with a wealth of national and international legal experience, it can hardly be objected that that experience, and the legal standards derived from it, are also regarded as potentially relevant.

2. Consideration of the alternatives

(a) The status quo

82. When the Commission first adopted the distinction between international delicts and international crimes, it called for the elaboration of two distinct regimes.[110] But in the event the draft articles were developed on the basis of a single notion of the "internationally wrongful act", until the time came to ask what additional and further consequences were to attach to international crimes. Thus a rather ambitious concept of international crimes is sketched in article 19, but it is barely followed through in the remainder of the text. This can be seen by considering three aspects of the present draft articles, corresponding to its three parts.

83. Except for article 19 itself, the rules for the "origin of international responsibility" as set out in part one make no distinction between international crimes and international delicts. Thus the rules for attribution are the same for the two categories. Yet one might expect that, for a State to be held criminally responsible, a closer connection to the actual person or persons whose conduct gave rise to the crime would be required. On the other hand, the rules for implication of a State in the internationally wrongful act of another State might well be more demanding for international crimes than for international delicts. Whatever the case with delicts, one should in no way assist or aid another in the commission of a crime. Yet article 27 makes no such distinction. The definition of the circumstances precluding wrongfulness in articles 29 to 34 is formally the same for international crimes and international delicts.[111] Yet it is not obvious that the conditions applicable, for example, to *force majeure* or necessity should be the same for both, and the notion of "consent" to a crime would seem to be excluded. Above all, the notion of "objective" responsibility, which is a keynote of the draft articles, is more questionable in relation to international crimes than it is in relation to international delicts, and the case for some express and general requirement of fault (*dolus*, *culpa*) is stronger in relation to international crimes. It may be said that these matters are to be resolved by the primary rules (e.g. by the definition of aggression or genocide), and some relevant primary rules do indeed contain such elements. But the category of "international crime", if it exists, cannot be closed, and it would be expected that such a category would include at least some common rules relating to the requirement of fault in the commission of a crime. No such rules are to be found in the draft articles.

84. The "content, forms and degrees of international responsibility", as set out in part two of the draft articles, do distinguish in certain respects between international crimes and international delicts, as noted above. But these distinctions do not amount to very much.

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[109] See, e.g., *Status of South West Africa Case, I.C.J. Reports, 1950*, p. 132; cf. Lord McNair, p. 148.

[110] See above, para. 73.

[111] It is true that the conditions set out in articles 29 to 34 would often preclude their application to crimes, e.g. in relation to consent (article 29), the requirement that the consent be "validly given". This shows that it is possible to draft key provisions in such a way as to be responsive to very different wrongful acts.

(a) As to the *definition of "injured State"* (article 40), while it is true that all States are injured by an international crime, so too are all States defined as "injured", for example, by any violation of any rule "established for the protection of human rights and fundamental freedoms", and no further distinction is drawn in the draft articles as between the different categories of "injured State";

(b) As to the *rights of the injured State in the field of cessation and reparation*, the differences are those set out in article 52. Restitution may be insisted upon although it disproportionately benefits the injured State, as compared with compensation (article 52 (a)). Restitution for crimes may seriously jeopardize the political independence or economic stability of the criminally responsible State (ibid.). Demands for satisfaction may be made which impair the dignity of that State (article 52 (b)). On the other hand nothing is said in article 52 about punitive damages, let alone fines or other forms of prospective intervention in the Government of the criminal State which might restore the rule of law.[112] Moreover, the consequences provided for in article 52 are conceived within the framework of requests for restitution by one or more injured States. There is no express provision for coordination of these consequences. While the additional consequences provided for in article 52 are not trivial, it must be concluded that they are neither central to the notion of an "international crime" as defined in article 19, nor sufficient of themselves to warrant that notion;

(c) As to *the possibility of taking countermeasures* under articles 47 to 50, no distinction is drawn between States injured by crimes and other injured States. Within the categories of "injured State" as defined in article 40, no distinction is drawn between those "directly" affected by the breach and other States. Nor is there any provision for coordination of countermeasures on the part of all injured States in cases of crimes;[113]

(d) As to the *obligations for all States arising from international crimes*, these are defined in article 53. Three of them are negative obligations: (a) not to recognize as lawful the situation created by the crime; (b) not to assist the criminal State in maintaining that illegal situation; and (c) to cooperate with other States in carrying out these (negative) duties. As to article 53 (a), however, the obligation not to recognize the legality of unlawful situations is not limited by international law to international crimes. For example, States should not recognize the legality of an acquisition of territory by the use or threat of force, whether or not that use of force is a crime, or is even unlawful.[114] Nor could a third State properly recognize the legality of, for example, the unlawful detention or killing of a diplomat. As to article 53 (b), it may be asked whether a third State is entitled to assist a wrongdoing State in maintaining the illegal situation created by an act which is not a crime. At least according to article 27 of the draft articles, this is not the case; article 27 obliges States not to aid or assist in the commission, or continuing commission, of an unlawful act by another State, whether or not that act constitutes a crime. Thus there is potential incoherence on this point

[112] In the case of many of the most serious crimes (e.g. genocide, crimes against humanity) the loss or injury cannot be reversed; this is also true of many of the side effects of a war of aggression. Apart from cessation, which is required in any event by international law, the main consequences of such crimes will lie in the fields of compensation and satisfaction. Some of the elements of "satisfaction" under article 45 (e.g. trial and punishment of the responsible persons) are very important, but they are not confined to international crimes. The only distinctive consequence relates to measures of satisfaction impairing the "dignity" of the criminally responsible State. The intangible and abstract notion of "dignity" is a thin reed on which to base a distinction between international crimes and delicts.

[113] Article 49 requires that countermeasures not be "out of proportion to ... the effects ... on the injured State". This could indirectly act as a limitation.

[114] See, e.g., the Friendly Relations Declaration, General Assembly resolution 2625 (XXV) of 24 October 1970, principle I, para. 9.

within the draft articles themselves. Over and above these negative duties, article 53 (d) provides that States are obliged "to cooperate with other States in the application of measures designed to eliminate the consequences of a crime". This is a modest obligation of solidarity, though it involves no obligation to take any initiatives. Again, however, the *a contrario* question must be asked: does article 53 (d) imply that States have no obligation to cooperate in eliminating the unlawful consequences, for example, of a serious breach of human rights not amounting to a crime, or of some other obligation *erga omnes*?

85. The provisions for the settlement of disputes contained in part three of the draft articles make no special provision whatever for crimes. This is in sharp contrast to the special provision made for settlement of disputes in cases of countermeasures.

86. For these reasons it can be seen that the consequences attached to international crimes in the present draft articles are limited, and for the most part non-exclusive, and that the procedural incidents of the concept are wholly undeveloped. It might be argued that in the present state of international law this "compromise" position is all that can be achieved, and that it does at least form a basis for further developments both in law and practice. In the Special Rapporteur's view, this argument is difficult to accept. The draft articles as they stand fail to do what the Commission set out to do in 1976, that is to say, to elaborate a distinct and specific regime for international crimes.[115] On the contrary, in minimizing the consequences of crimes, they tend to trivialize delicts as well, yet the latter may cover very serious breaches of general international law.[116]

(b) Substituting for "international crimes" the notion of "exceptionally serious wrongful act"

87. A second possibility, referred to in the footnote to article 40 as adopted on first reading, is to substitute the notion of "exceptionally serious wrongful act", thereby "avoiding the penal implications of the term" international crimes.[117] Although this idea has attracted some support in the comments of Governments (as compromise solutions often tend to do), it suffers, in the Special Rapporteur's view, from a central difficulty. Either the term "exceptionally serious wrongful act" (or any cognate term which may be proposed) is intended to refer to a separate category of wrongs, associated with a separate category of obligations, or it is not.

- ◊ If it does not refer to a separate category, but simply to the most serious breaches of international law in some general sense, there is no reason to believe that we are dealing with a separate regime of wrongful acts, or that a suitably graduated regime of reparation and countermeasures would not allow a proper response to the most serious breaches. Breaches of international law range from the most serious to relatively minor ones, and part two already seeks to reflect these gradations, independently of any question of crimes;
- ◊ On the other hand, if the proposed new term does refer to a separate category, it does not name it. Under existing international law, two possible categories are obligations *erga omnes*, and rules of *jus cogens*.[118] Yet, although they consist by definition of norms and principles which are of concern to the international community as a whole, those categories do not correspond in any simple way to the notion of the "most serious

[115] See above, para. 73.

[116] It should be noted that neither the proponents nor the opponents of article 19 within the Commission are satisfied with the provisions of the draft articles; see, e.g., the items cited in para. 45, note 29, above.

[117] See above, para. 51.

[118] See above, paras. 68-71.

breaches". There can be very serious breaches of obligations which are not owed *erga omnes* – breaches of diplomatic immunity, for example – and minor breaches of obligations which are owed *erga omnes*. No doubt there is room in part two of the draft articles for spelling out in a more systematic way the specific consequences that breaches of norms of *jus cogens*, or of obligations *erga omnes*, might have within the framework of secondary rules of State responsibility. The draft articles already do so, although only to a limited extent.[119] But there is no reason to believe that a more systematic accounting for these consequences within the draft articles would produce two (or three) separate regimes of responsibility.

Thus the proposed renaming of international crimes presents a dilemma. On the one hand, that renaming might reflect the great variation in the seriousness of internationally wrongful acts; alternatively it might refer to the existence of certain norms involving the international community as a whole (*jus cogens*, obligations *erga omnes*). On the other hand, it might be merely a disguised reference to the notion of crime, the crime that dare not speak its name. In the former case there is no indication that there exists a separate *regime* for responsibility for the most serious breaches, or for breaches of obligations *erga omnes* or of *jus cogens* norms, as distinct from variations in the consequences attaching to the particular acts in question. In the latter case, there is no justification for a merely cosmetic exercise.

88. For these reasons, in the Special Rapporteur's view, it is necessary to turn from the two possible approaches adumbrated in the draft articles to other, more fundamental options.

(c) Criminalizing State responsibility

89. Perhaps the most fundamental approach is to take the premise of article 19 seriously, and to propose a regime for international crimes of State which does precisely involve treating such crimes with the legal consequences that morally iniquitous conduct ought to entail. The underlying appeal of this approach is twofold:

- ◊ First, it appeals to the reality that State structures may be involved in wholesale criminal conduct – in genocide, in attempts to extinguish States and to expel or enslave their peoples. It is true, as the Nürnberg Tribunal pointed out, that such attempts will necessarily be led by individuals and that at some point in the governmental hierarchy individuals will necessarily be acting criminally. But those individuals may be difficult to trace or apprehend, and the leadership of the few in situations of mass violation requires the cooperation of many others. It is a characteristic of the worst crimes of the period since 1930 that they have been committed within and with the assistance of State structures;

- ◊ Secondly, it appeals to the rule of law. International law does now define certain conduct as criminal when committed by individuals, including in their capacity as heads of State or senior State officials, and it disqualifies those individuals from relying on the superior orders of their State as a defence. Yet it would be odd if the State itself retained its immunity from guilt. It would be odd if the paradigm person of international law, the State, were treated as immune from committing the very crimes that international law now characterizes as crimes in all cases whatsoever.

90. If the international crimes referred to in article 19 are real crimes and not merely a pejorative way of describing serious breaches of certain norms – as the account in the preceding paragraph assumes – the question must be asked what kind of regime would be

[119] In particular, the notion of obligations *erga omnes* is not reflected in the definition of "injured State" in article 40.

needed to respond to them. What would be expected of the draft articles if they were to contain a regime of international crimes of States in the proper sense of the term? It should be noted here that international law does say things about how allegations of crimes are to be handled. It has a developing notion of due process.[120] That notion has in turn been applied by analogy to corporate crime at the international level, by such bodies as the European Commission of Human Rights and the European Court of Justice.[121] It may be true that not all the elements of due process applicable under international law to national criminal proceedings are equally applicable to international criminal proceedings.[122] But it would be odd if international law had totally different notions of due process in relation to international crimes of States than it has of due process in relation to other international crimes.

91. It is suggested that five elements would be necessary for a regime of State criminal responsibility in the proper sense of the term. First of all, international crimes of States must be properly defined: *nullum crimen sine lege*. Secondly, there would need to be an adequate procedure for their investigation on behalf of the international community as a whole. Thirdly, there would need to be adequate procedural guarantees, in effect, a system of due process in relation to charges of crimes made against States. Fourthly, there must be appropriate sanctions consequential upon a determination, on behalf of the community, that a crime had been committed, and these would have to be duly defined: *nulla poena sine lege*. These sanctions would be independent of any liabilities that might flow from such acts as wrongs against particular persons or entities. Fifthly, there must be some system by which the criminal State could purge its guilt, as it were, could work its way out of the condemnation of criminality. Otherwise the stigma of criminality would be visited on succeeding generations.

92. No doubt considerable imagination would be called for in giving effect to requirements such as these in relation to international crimes of State. But the task is not a priori impossible. It used to be said that *societas delinquere non potest*, but forms of corporate criminal responsibility are rapidly developing at the national level, and are proving to perform a useful function.[123] What is critical for present purposes, however, is to note that, of the five conditions for a regime for international crimes of States properly so-called which were identified in the preceding paragraph, the draft articles provide for none. Admittedly the task of definition of crimes is largely a matter for the primary rules. But the extreme imprecision of article 19 has already been noted, and the equation of all the conditions for crime with those for delict (imputability, complicity, excuses, etc.) in part one is highly implausible.[124] The other four conditions are, however, a matter for the draft articles, if they are to cover international crimes of State in a satisfactory way. As the above analysis shows, the draft articles do not satisfy any of these conditions. Articles 51 to 53 do not specify special, let alone stringent, consequences of crimes, penalties properly so-called.[125] Of the other three elements, none is provided for at all. Addressing these issues would be a major exercise.

(d) Excluding the possibility of State crimes

[120] See, e.g., International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI), annex, article 14, and its equivalents in other instruments.

[121] See, e.g., *Société Sténuit v. France* (1990), ECHR Ser.A, No. 232-A, discussed by G. Stessens in "Corporate Criminal Liability: A Comparative Perspective", *International and Comparative Law Quarterly*, vol. 43 (1994), pp. 505-506.

[122] As the Appeals Chamber of the International Tribunal for the Former Yugoslavia stated in its judgement in the *Tadić* case (1996), *International Law Reports*, vol. 105, pp. 472-476 (paras. 42-46).

[123] See, e.g., B. Fisse and J. Braithwaite, *Corporations, Crime and Accountability* (Cambridge University Press, Cambridge, 1993).

[124] See above, paras. 49, 50, 82.

[125] See above, paras. 51, 83.

93. According to another view, quite widely held in the literature, there is no sufficient basis in existing international law for the notion of international crimes of State, and no good reason to develop such a notion. There is no clear example of a State authoritatively held to have committed a crime. Nor is there any clear need for the concept, given the generality of the normal regime of State responsibility, and the breadth of the powers of the Security Council under the Charter to deal with threats to or breaches of international peace and security, powers which are now being vigorously used and which the draft articles cannot in any way affect. Many State crimes primarily affect the population of the "criminal State" itself; to punish the State in such cases amounts, indirectly, to punishing the victims.

94. The comments of Governments hostile to article 19 have been summarized above; they provide a range of further reasons against the notion of international crimes of States.[126] The need for that notion may also be reduced by the development of institutions for prosecuting and trying individuals for international crimes, as exemplified by the proposed international criminal court.

95. On the other hand, there are some difficulties with the view that the draft articles should entirely exclude the possibility of State crimes. In the first place, there is some support in State practice for the notion of international crimes of State, at least in the case of a few crimes such as aggression. Only States can commit aggression, and aggression is characteristically described as a crime.[127] Moreover, even though there are very few cases of State conduct actually being treated as a crime, there are cases in which States have been treated as virtual criminals, and a more regular procedure is called for, one which is not so dependent on the extraordinary powers of the Security Council. As a matter of policy, it might be argued that legal systems as they develop seem to need the notion of corporate criminal responsibility for various purposes; it is not clear that the Commission can or should exclude that possibility for the future in relation to the State as a legal entity.

96. For these and other reasons a number of Governments continue to support the distinction between crimes and delicts as formulated in article 19. It should also not be forgotten that at earlier stages of the discussion of part one the distinction achieved quite wide acceptance.[128]

(c) Decriminalizing State responsibility

97. In the Special Rapporteur's view, it is neither necessary nor possible to resolve for the future the question of State crimes. There is some practice supporting the notion, but with the possible exception of the crime of aggression, which is specially dealt with in the Charter of the United Nations, that practice is embryonic. A coherent system for dealing with the criminal conduct of States is at present lacking, both from a procedural and from a substantive point of view; both points of view are of equal significance. There is no prospect that the draft articles could fill that gap, having regard, *inter alia*, to the many other issues which the draft articles do have to address and the need to avoid overburdening them, increasing the risk of outright failure.

98. On the other hand, there is already a concept of obligations *erga omnes*, obligations owed to the international community as a whole, and there is also the concept of non-derogable norms (*jus cogens*). Both of these concepts need to be reflected in the draft articles, as appropriate. Doing so would not reintroduce the notion of "international crimes" under another name. Historically the general regime of State responsibility has been used to cover

[126] See above, para. 52.

[127] See, e.g., principle I, para. 9, of the Friendly Relations Declaration, *supra*, note 114.

[128] See above, paras. 44, 53.

the whole spectrum of breaches of international law, up to the most serious ones. It is not the case that responses to the most serious breaches are the exclusive prerogative of international organizations, in particular the Security Council. States, acting in solidarity with those most directly injured, also have a role.

99. It is perfectly coherent for international law, like other legal systems, to separate the question of the criminal responsibility of legal persons from questions arising under the general law of obligations. Particular links between the two categories may be established. For example, victims may be able to seek redress by an order for compensation following upon a determination of guilt. But the categories remain distinct, and the general law of obligations is understood to operate without prejudice to issues of the administration of criminal justice. Under such a system the law of obligations remains quite general in its coverage, extending to the most serious wrongs qua breaches of obligation, notwithstanding that those wrongs may also constitute crimes. It is suggested that this is the most appropriate and coherent solution to the problem of international crimes raised by article 19. It does not preclude the development in future of the notion of international crimes of State, in accordance with proper standards of due process attendant on any criminal charge. At the same time it does not trivialize other serious breaches of international law, as the coexistence of a category of international crimes and international delicts in the draft articles would be almost certain to do.

3. Recommendation

100. For the reasons given above, the recognition of the concept of "international crimes" would represent a major stage in the development of international law. The present draft articles do not do justice to the concept or its implications for the international legal order, and cannot be expected to do so. The subject is one that requires separate treatment, whether by the Commission, if the Sixth Committee should entrust it with this task, or by some other body.

101. It is recommended that articles 19 (and, consequently, articles 51 to 53) be deleted from the draft articles. In the context of the second reading of part two, article 40, paragraph 3, should be reconsidered, *inter alia*, so as to deal with the issue of breaches of obligations *erga omnes*. It should be understood that the exclusion from the draft articles of the notion of "international crimes" of States is without prejudice (a) to the scope of the draft articles, which would continue to cover all breaches of international obligation whatever their origin, and (b) to the notion of "international crimes of States" and its possible future development, whether as a separate topic for the Commission, or through State practice and the practice of the competent international organizations.